

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 19-369
)	
LAFON ELLIS)	

NOTICE REGARDING SOURCE CODE

AND NOW comes the United States of America, through its counsel, Scott W. Brady, United States Attorney for the Western District of Pennsylvania, and Brendan T. Conway, Assistant U.S. Attorney for said district, and respectfully submits the government's Notice Regarding Source Code.

By Order dated January 21, 2021, the Court directed the government to consult with Cybergenetics and file a notice stating whether Cybergenetics is willing to disclose its source code to the defendant, and, if so, provide the Court with a proposed protective order pursuant to which Cybergenetics would be amendable to production. Counsel for the government has consulted with Cybergenetics and Cybergenetics is not willing to provide its source code absent an order from the Court compelling it to do so. It is the position of Cybergenetics and the government that the source code is not discoverable for all of the reasons articulated by the government in previous pleadings. Cybergenetics also believes that it is important in protecting its trade secrets that it not provide the source code absent a court order directing it to do so. In addition, Cybergenetics expects this issue to continue to be raised repeatedly as use of its technology expands and therefore seeks a ruling from the Court as to whether, in fact, this source code is discoverable.

If the Court determines that the source code is discoverable, Cybergenetics intends to comply fully with the Court's order as long as its trade secrets are protected from disclosure. If the Court were to order Cybergenetics to produce the source code, it would be amenable to

disclosing the source code under the conditions set forth in Exhibit A, which is based on the Protective Order entered in Commonwealth v. Watson, Criminal No.: FE-2019-279 (Fairfax Va. Cir. Ct. October 9, 2020) and with which Cybergenetics complied.¹

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¹ The government notes that the defense experts have still not reviewed the material provided in that case, and therefore the proposed order includes a sixty-day timeframe for their review as opposed to simply leaving that timeframe open ended.